Supreme Court, U.S.
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No. 85-2053

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

W.J. SCHNEIDER AND K.B. MARCUS,

Petitioners,

v.

CITY OF EAST ORANGE,

Respondent,

and

ATTORNEY GENERAL OF NEW JERSEY,

Intervenor-Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

BRACH, EICHLER, ROSENBERG,
SILVER, BERNSTEIN,
HAMMER & GLADSTONE, P.A.
H. Neil Broder
(Counsel of Record)
Alan R. Hammer
Michael Pesce
Daniel G. Keough
101 Eisenhower Parkway
Roseland, New Jersey 07068
(201) 228-5700
Attorneys for Petitioners
W.J. Schneider and
K.B. Marcus

SERRAO ASSOCIATES, INC.-*Legal Printers*—(201) 240-4747

QUESTIONS PRESENTED

1. Whether, as a matter of law, a New Jersey owner of real property may be constitutionally deprived of its right to challenge its assessment and resulting taxes because its taxes were not paid in full on the date that such challenge is filed, absent any opportunity to cure said non-payment through subsequent corrective conduct (i.e., payment).

2. Whether, as a matter of law, a New Jersey owner of real property assessed at under $750,000 may be confronted with a jurisdictional pre-payment requirement in order to litigate the correctness of its taxes, whereas an owner of property assessed in excess of $750,000 faces no such jurisdictional bar.

PARTIES TO THE PROCEEDING IN THE SUPREME COURT OF NEW JERSEY

A. Petitioners:

1. W.J. Schneider

2. K.B. Marcus

B. Respondent:

1. City of East Orange

C. Respondent-Intervenor:

1. Attorney General of New Jersey

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

W.J. SCHNEIDER and
K.B. MARCUS,

Petitioners,

v.

CITY OF EAST ORANGE,

Respondent,

and

ATTORNEY GENERAL OF NEW JERSEY,

Intervenor-Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

The petitioners respectfully pray that writ of certiorari issue to review the judgment and opinion of the Supreme Court of New Jersey entered in this proceeding on March 13, 1986.

OPINIONS BELOW

The currently unreported written opinion of the New Jersey Supreme Court is set forth in Appendix A annexed hereto. The reported written opinion of the Superior Court of New Jersey, Appellate Division is reported at 196 N.J. Super. 587, 483 A.2d 839 (1984) and is reproduced at Appendix B annexed hereto. The unreported transcript of the oral opinion of the Tax Court of New Jersey granting respondent's motion to dismiss Petitioners' complaint, and the order resulting therefrom, are set forth in Appendix C attached hereto.

JURISDICTION

The judgment of the Supreme Court of New Jersey was entered March 13, 1986. The jurisdiction of the Court is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions involved in this case are Amendment XIV to the Constitution of the United States and Article 8, section 1(a) of the Constitution of New Jersey.

The statutory provisions involved are New Jersey Stat. Anno. 54:2-39 and New Jersey Stat. Anno. 54:3-27.

These provisions are set forth in Appendix D attached hereto.

STATEMENT OF THE CASE

Petitioners W.J. Schneider and K.B. Marcus are the owners of a commercial office building located in East Orange, New Jersey.

On or about August 14, 1979, Petitioners filed a Petition of Tax Appeal to the Essex County Board of Taxation ("County Board") challenging the 1979 assessment of their property. The subject property was assessed by defendant City of East Orange ("Municipality") for the year 1979 as follows:

LAND:	$123,900.00
BUILDING:	$701,000.00
TOTAL:	$825,000.00

After the filing of this petition, the parties exchanged reports of their respective appraisers. The report of Petitioners' appraiser valued the subject property, for the year 1979, at $630,000.00 A hearing of this appeal was conducted by the County Board on October 24, 1979, resulting in a judgment of same date affirming the original assessment.

Thereafter, by Complaint filed on November 13, 1979, Petitioners appealed from this County Board decision to the New Jersey Tax Court, seeking a review of the County Board Judgment on the grounds of valuation (First Count) and discrimination (Second Count).

At the time that Petitioners filed their Complaint to the Tax Court on November 13, 1979, plaintiffs had fully paid their taxes for the first three (3) quarters of the year, except for the sum of $1,920.45, which was paid on November 14, 1979. Petitioners paid their fourth quarter taxes on December 19, 1979, at which time they had satisfied in full all property tax liabilities for the year 1979.

On or about May 29, 1982, or over two and one-half (2 1/2) years after the filing of Petitioners' Complaint to the Tax Court, Respondent Municipality filed a Notice of Motion and supporting Certification seeking, inter alia, to dismiss the 1979 Complaint based upon Petitioners' alleged failure to comply with N.J.S. 54:2-39 (see Appendix D).

This motion was initially argued before the Honorable David E. Crabtree, J.T.C. on June 24,

1982. In an oral decision rendered on that date (Appendix C), the Tax Court below deferred a determination pending the decision by the Superior Court of New Jersey, Appellate Division, of an appeal from the decision of the Tax Court in Powder Mill I Assoc. v. Hamilton Tp., 3 N.J. Tax 439 (Tax Ct. 1981).

Powder Mill was decided by the Appellate Division on June 10, 1983 (190 N.J. Super. 63, 461 A.2d 1199 (App. Div. 1983)). Thereafter, Respondent Municipality renewed its motion to dismiss. Oral argument was heard by the Tax Court below on September 15, 1983 and an oral decision was rendered on that date. The Tax Court below granted defendant's motion, thereby dismissing plaintiffs' appeal for the year 1979, based upon its purported strict construction of N.J.S. 54:2-39 (now N.J.S. 54:51A-1(B)) as imposing an absolute jurisidictional requirement not susceptible to being cured.

This oral decision was subsequently embodied in an Order of Dismissal entered on October 3, 1983 (Appendix C).

Thereafter, Petitioners appealed from this final judgment to the Superior Court of New

Jersey, Appellate Division. While this appeal was pending, the Attorney General of New Jersey was granted leave to intervene in the case in order to defend the constitutionality of N.J.S. 54:2-39.

On appeal to the Appellate Division, Petitioners challenged the final judgment of the Tax Court, alleging the following:

1. That the Court had improperly applied inconsistent statutory constructions to N.J.S. 54:2-39 and 54:3-27;

2. That the decision of the Tax Court had deprived Petitioners of their property without due process of law and in violation of Petitioners' constitutional guaranty to be uniformly assessed and taxed; and

3. That the decision of the Tax Court had deprived Petitioners of their constitutional right to equal protection of the law.

The Appellate Division rejected Petitioners' challenge in a written opinion (Appendix B). Petitioners thereafter sought review of this decision by the New Jersey Supreme Court. The New Jersey Supreme Court granted certification of

the case (see 101 N.J. 229, 501 A.2d 908 (1985)), but affirmed for the reasons expressed by the Appellate Division, in a presently unreported written opinion entered on March 13, 1986 (Appendix A).

Petitioners now seek review by this Court of the United States constitutional issues raised below.

REASONS FOR GRANTING THE WRIT

This case merits review because, if left undisturbed, the decisions below result in the deprivation of a property owner's right to contest his real property assessment, and resulting taxes, if his taxes are not paid in full on a date certain, absent any subsequent opportunity to cure this defect through payment.

Petitioners do not here dispute the notion that a taxing authority may mandate that a taxpayer "pay now and litigate later," but submit that an opportunity must be given to cure a delinquent payment before the constitutionally protected right to be uniformly assessed and taxed is eliminated.

Furthermore, the absolute jurisdictional bar found by the courts below to be imposed by N.J.S. 54:2-39 is to be contrasted with the non-jurisdictional tax prepayment requirement found to exist in N.J.S. 54:3-27. The only difference between these two (2) statutory provisions is the class of taxpayers affected thereby. N.J.S. 54:3-27 applies to property owners with assessments of over $750,000.00, who can, as a result of the level of their assessment, seek direct

review of the New Jersey Tax Court, under a non-jurisdictional tax prepayment requirement. N.J.S. 54:2-39 applies to all other taxpayers, and permits access to the New Jersey Tax Court only if a taxpayer's taxes are paid in full on the date he seeks Tax Court review. If they are not, a taxpayer's subsequent payment will be of no significance, because the statute, as interpreted below, permits no cure. In this fashion, Petitioners submit that they have been deprived of their right to equal protection of the laws.

I. The Due Process Claim

A. The decision of the New Jersey Supreme Court raises an important question of constitutional law that should be settled by this Court.

At the time that Petitioners filed their Complaint to the Tax Court, N.J.S. 54:2-39 provided, in pertinent part, as follows:

> At the time that a complaint has been filed with the Tax Court, all taxes or any installments thereof then due and payable for the year for which review is sought must have been paid.

On the basis of this statutory authority, Petitioners' complaint challenging their 1979 assessment (which assessment had been affirmed by the Essex County Board of Taxation) was dismissed, because Petitioners' taxes were not paid in full on the date that their complaint was filed with the Tax Court. The fact that Petitioners' taxes were paid in full five (5) weeks later was not considered significant by the courts below, nor was the fact that respondent municipality did not move for dismissal for more

than two and one-half (2 1/2) years after this short period of non-payment.

Instead, the courts below construed N.J.S. 54:2-39 as imposing an absolute bar to a taxpayer's right to contest their real property assessment, without any notice of or right to cure this allegedly jurisdictional payment prerequisite.

Article 8, § 1(a) of the New Jersey Constitution guarantees that all property will be assessed under general laws and uniform rules. This constitutional guarantee is further buttressed by the equal protection clauses of the State and Federal constitutions, which "...preclude taxing the same class of property at different rates." Robinson v. Cahill, 118 N.J. Super. 223, 277, 287 A.2d 187 (Law Div. 1972), affirmed 62 N.J. 473, 303 A.2d 273 (1973), cert. denied sub. nom Dickey v. Robinson, 414 U.S. 976 (1973).

Implicit in this guarantee is the right of a taxpayer to challenge his assessment if his property has not been uniformly taxed. Airwork Service Division v. Taxation Div. Dir., 2 N.J. Tax 329, 342 (Tax Ct. 1981). Otherwise, a tax-

payer would have a right without a remedy.

In the instant case, the decisions of the courts below have effectively deprived Petitioners of a forum in which to contest the validity of their assessment. In so ruling, Petitioners submit that the courts below have interpreted N.J.S. 54:2-39 so as to deprive Petitioners of due process of law.

Petitioners recognize the general rule that a State may require payment of a tax prior to an opportunity to litigate its correctness. General Trading, 83 N.J. 122, 416 A.2d 37 (1980), N.Y. Susquehanna & W.R.R. v. Vermeulen, 44 N.J. 491, 501-502, 210 A.2d 214 (1965); Powder Mill, supra, 3 N.J. Tax at 439, 448, rev'd 190 N.J. Super. 63 (App. Div. 1983). However, this well-settled principle of law does not end the inquiry in this case, for the statutory provision at issue here (N.J.S.A. 54:2-39), as interpreted by the courts below, does more than simply require that taxes be paid in order to litigate. Rather, the provision has been interpreted to impose an absolute jurisdictional bar to litigation if taxes were not paid on a date certain (the date of the filing of a Complaint to the Tax Court) and years before defendant municipality affirmatively

raised the issue, without any opportunity for the taxpayer to cure this defect.[1] It is this absence of notice and reasonable opportunity to satisfy the procedural requirement of having one's taxes current in order to litigate, which Petitioners assert results in a deprivation of property without due process of law.

This Court has articulated three distinct factors to be considered in deciding whether a denial of due process has occured.

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedure used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.

Mathews v. Eldridge, 424 U.S. 319, 335 (1976).

As stated above, the private interest

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[1] It should be noted that when delinquent taxes are paid, they must be paid together with a substantial interest charge. N.J.S. 54:4-67.

affected by N.J.S. 54:2-39 is Petitioners' constitutional right to be assessed uniformly for local property tax purposes, and the right to challenge the correctness of an assessment constitutes a critical component of this constitutional right. Thus, the lower Courts' misinterpretation of N.J.S.A. 54:2-39 affects a private interest of substantial monetary significance and constitutional character.

With respect to whether additional procedural safeguards would serve a useful purpose, Petitioners submit that they were entitled, at a minimum, to notice in the form of a motion to the New Jersey Tax Court by the municipality. During the requisite two (2) week notice under the New Jersey Court Rules, Petitioners would have the right to pay the taxes for the year under appeal prior to adjudication of said motion and thereby satisfy the procedural requirement contained in N.J.S. 54:2-39. In this manner, Petitioners would be afforded an opportunity to be heard at a meaningful time and in a meaningful manner. Matthews v. Eldridge, supra, at 424 U.S. 333, citing Armstrong v. Manzo, 380 U.S. 545, 552 (1965). Indeed, the taxes at issue in the instant case were fully paid approximately five (5) weeks after the filing of Petitioners'

complaint and absent such notice. The "probable value" of the procedural safeguard of a notice of motion prior to dismissing Petitioners' complaint with prejudice, therefore, would in the instant case be the complete satisfaction of the taxes for the tax year and preservation of Petitioners' "day in Court."

The final consideration in a due process analysis of "the Government's interest" supports affording Petitioners' the opportunity to satisfy the tax indebtedness.

Admittedly, the municipality has an important interest in assuring the uninterrupted flow of tax dollars. However, the municipality is already armed with significant weapons to assure payment compliance, through in rem tax foreclosures and an eighteen percent (18%) interest charge upon delinquent payments, N.J.S. 54:4-67. Perhaps more importantly, the municipality will be deprived of the dismissal weapon contained in N.J.S. 54:2-39, if the taxpayers' view is adopted, only for the period of time necessary to make a motion and receive a decision thereon. If, while this motion is pending, the taxpayer makes the delinquent payment(s), the motion will be denied, but the goal of the statutory threat

(to compel payment) will have been accomplished.

Petitioners submit that this insignificant delay imposed upon the municipality is far outweighed by the absolute, irreversible loss to Petitioners of their constitutional right to be assessed and taxed uniformly.

> The timing and nature of the hearing, therefore, is determined by an accommodation of the competing interests which include the importance of the private interest, the finality of the deprivation, the likelihood of government error and the magnitude of government interests.

Price v. City of Junction, Tex., 711 F. 2d 582, 589 (5th Cir. 1983), citing Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982). Petitioners emphasize their recognition of and respect for the governmental interest at stake, and seek through this petition procedural due process sufficient to accomodate both the interests of themselves and the government.

II. The Equal Protection Claim.

A. The decision of the New Jersey Supreme Court raises an important question of constitutional law that should be settled by this Court.

New Jersey law provides for review of a property owner's real property tax assessment by the New Jersey Tax Court via two (2) distinct procedural routes.

First, a taxpayer with an assessment of less than $750,000 can obtain Tax Court review only after an application to and adverse decision from the local county board of taxation. N.J.S. 54:2-39 provides that when this Complaint is filed, all taxes then due and payable must have been paid.

Secondly, a taxpayer with an assessment of more than $750,000 may proceed directly to the Tax Court (without county board review), in which case N.J.S. 54:3-27 governs the requirement that taxes be paid, as follows:

> A taxpayer who shall file an appeal from an assessment against him shall pay to the collector of the

> taxing district no less than the first three quarters of the taxes assessed against him for the current tax year in the manner prescribed by N.J.S.A. 54:4-66.*

As previously noted, N.J.S. 54:3-29 has been interpreted by the courts below to impose a jurisdictional, non-curable payment requirement. This interpretation is to be contrasted with the judicial interpretation accorded the virtually identical language of N.J.S. 54:3-27, which has been construed to be non-jurisdictional, and susceptible of being cured, in Lecross Assoc. v. City Partners, 168 N.J. Super. 96, 401 A.2d 1099 (App. Div. 1979), certif. denied 81 N.J. 294 405 A.2d 838 (1979)** and Powder Mill I Assoc. supra, 190 N.J. Super. 63 (App. Div. 1983).

Thus, Lecross provides that a taxpayer's complaint will be dismissed for non-payment only

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*N.J.S. 54:4-66 provides that quarterly tax payments are due on February 1, May 1, August 1 and November 1, and thereafter shall be considered delinquent.

**N.J.S. 54:3-27, as it provided at the time of the Lecross decision, was different from the version involved herein only as to the amount of taxes required to be paid (90% versus three quarters.)

after a motion is made by the municipality addressed to that issue, and even then, only if the taxpayer has not cured the delinquency prior to the motion return date.

Furthermore, these two (2) statutes have virtually identical legislative history. Indeed, the legislative history of N.J.S. 54:3-27, which has been interpreted to be non-jurisdictional, provides as follows:

> This bill requires the first three quarters of the taxes assessed for the current year to be paid as an absolute requirement, leaving no question open as to what amount of taxes are to be paid. (Statement to Assembly, No. 2147, dated: July 11, 1977) (emphasis added)

Through these contrasting judicial interpretations of these two (2) statutes, Petitioners submit that N.J.S. 54:2-39 is violative of Petitioners' right to equal protection of the law. Simply stated, had Petitioners sought direct review of their assessment by the New Jersey Tax Court, they would have confronted a pre-payment requirement that was non-jurisdictional and able to be cured. By opting to first seek review by the local county board of taxation, Petitioners unwittingly confronted the jurisdictional payment

requirement of N.J.S. 54:2-39.

Petitioners recognize the significant burden facing them in challenging tax legislation on equal protection grounds, and that "...the states have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation." Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 359 (1973).

Despite this admittedly wide latitude in the area of taxation, N.J.S. 54:2-39, as interpreted by the courts below, has no legitimate basis for treating small taxpayers (those with assessments of less than $750,000) in a more severe manner than large taxpayers (those with assessments of more than $750,000). As previously noted, neither the legislative language nor legislative history manifest any intention to treat these two (2) classes of taxpayers differently. Indeed, if there were such an intention in the legislation, logic would lead to a more exacting pre-payment requirement for large rather than small taxpayers, the exact converse of the result reached below.

Thus, Petitioners submit that N.J.S.

54:2-39, as interpreted by the Courts below, has unjustifiably imposed upon Petitioners a burden not reasonabley related to a legitimate governmental objective and different from other similarly situated taxpayers.

CONCLUSION

For the reasons set forth above, the petition for writ of certiorari should be granted.

BRACH, EICHLER, ROSENBERG,
SILVER, BERNSTEIN, HAMMER
& GLADSTONE

H. NEIL BRODER
(Counsel of Record)
ALAN R. HAMMER
MICHAEL PESCE
DANIEL G. KEOUGH
101 Eisenhower Parkway
Roseland, New Jersey 07068
201/228-5700

Attorneys for Petitioners
W. J. Schneider and
K. B. Marcus

APPENDIX A

SUPREME COURT OF NEW JERSEY

A-30 September Term 1985

W.J. SCHNEIDER and

K.B. MARCUS,

Plaintiffs-Appellants,

v.

CITY OF EAST ORANGE,

Defendant-Respondent,

and

ATTORNEY GENERAL OF NEW JERSEY,

Intervenor-Respondent.

Argued October 21, 1985 -- Decided March 13, 1986

On certification to the Superior Court, Appellate Division, whose opinion is reported at 196 N.J.Super. 587 (1984).

Alan R. Hammer argued the cause for

appellants (Brach, Eichler, Rosenberg, Silver, Bernstein, Hammer & Gladstone, attorneys; Mr. Hammer and Michael Pesce, of counsel; Mr. Pesce and Daniel Keough, on the brief).

Saul A. Wolfe argued the cause for the respondent (Skoloff and Wolfe, attorneys; Mr. Wolfe, of counsel; Robert F. Giancaterino, on the brief).

Harry Haushalter, Deputy Attorney General, argued the cause for the intervenor (Irwin I. Kimmelman, Attorney General of New Jersey, attorney; James J. Ciancia, Assistant Attorney General, of counsel; Mr. Haushalter, on the brief).

PER CURIAM

The judgment of the Appellate Division is affirmed, substantially for the reasons expressed in the opinion of Judge Gaynor, reported at 196 N.J. Super. 587 (1984).

CHIEF JUSTICE WILENTZ and JUSTICES CLIFFORD,

POLLOCK, O'HERN, GARIBALDI, and STEIN join in this opinion. JUSTICE HANDLER did not participate.

APPENDIX B

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

A-509-83T3

W.J. SCHNEIDER and

K.B. MARCUS,

Plaintiffs-Appellants,

v.

CITY OF EAST ORANGE,

Defendant-Respondent,

and

ATTORNEY GENERAL OF NEW JERSEY,

Intervenor-Respondent.

Argued September 10, 1984 -- Decided November 9, 1984.

Before Judges Morton I. Greenberg, O'Brien and Gaynor

On appeal from the final judgment of

the Tax Court of New Jersey

Alan R. Hammer argued the cause for appellants (Brach, Eichler, Rosenberg, Silver, Bernstein, Hammer & Gladstone, attorneys; Mr. Hammer and Michael Pesce, of counsel; Mr. Pesce and Daniel Keough, on the brief).

Robert F. Giancaterino argued the cause for the respondent (Skoloff and Wolfe, attorneys; Saul A. Wolfe, of counsel; Mr. Giancaterino, on the brief).

Harry Haushalter, Deputy Attorney General, argued the cause for the intervenor (Irwin I. Kimmelman, Attorney General of New Jersey, attorney; James J. Ciancia, Assistant Attorney General, of counsel; Mr. Haushalter, on the brief).

The opinion of the court was delivered by

GAYNOR, J.A.D.

This appeal from a dismissal of the complaint by the Tax Court involves the construction and constitutionality of N.J.S.A. 54:2-39, now 54:51A-1(b), with respect to the tax payment requirement on an appeal from the Essex County Board of Taxation to the Tax Court. Plaintiffs contend that the court's strict construction of this provision of the statute was inconsistent with the judicial interpretation given to N.J.S.A. 54:3-27 and violated their constitutional rights of due process and equal protection. We disagree and affirm.

Plaintiffs appealed the assessment on their office building for the 1979 tax year to the Essex County Board of Taxation, which on October 24, 1979 affirmed the assessment. On November 13, 1979 an appeal to the Tax Court was filed, at which time all of the taxes then due for that year had not been paid. Payment of the balance of taxes due was made on December 16, 1979. On defendant's motion, the complaint before the Tax Court was dismissed because of plaintiffs' failure to have paid all of the 1979 property taxes at the time of the filing of the complaint in accord with N.J.S.A. 54:2-39. The court reasoned that the statute clearly required the payment and that such provision was a jurisdictional require-

ment for appeal proceedings before the Tax Court.

Plaintiffs argue that the plain language of N.J.S.A. 54:2-39 does not evince a clear and unequivocal intent that taxes for the year involved must be paid as of the date of the appeal from the county tax board to the Tax Court. They contend that the statue must be read consistently with N.J.S.A. 54:3-27, assertedly containing payment language virtually identical to that of the challenged statute, which has been judicially interpreted as not constituting a jurisdictional requirement to a proceeding before a county board or a direct appeal to the Tax Court. It is further suggested that different jurisdictional construction of these two statutes is not supported by legislative intent, inasmuch as the purpose of the tax payment requirement in both statutes was to prevent financial hardship to the municipality resulting from an interruption in the flow of tax revenues. Plaintiffs further assert that the challenged construction violates their equal protection and due process rights.

The defendant municipality contents that the language of N.J.S.A. 54:2-39 evidences an intent

to condition the power of the Tax Court to act upon a complaint filed from a county board judgment on the timely payment of taxes, whereas no such intention is evident form the language of N.J.S.A. 54:3-27. Also, it asserts that plaintiff's equal protection challenge must be rejected because of their lack of standing and the inadequate presentation of this issue to the Tax Court, and because of the waiver resulting from their voluntary election to proceed in accordance with N.J.S.A. 54:2-39 rather than appealing to the Tax Court directly from the assessment. Additionally, the municipality disputes that the tax payment requirement of the subject statute invidiously discriminates against taxpayers or is violative of plaintiffs' constitutional rights.

The Attorney General joins the municipality in asserting the constitutional validity of the statute and argues that its payment requirement is consistent with equal protection and due process standards and is not within the scope of the tax clause of the New Jersey Constitution.

At the time of the filing of the tax court complaint, N.J.S.A. 54:2-39 provided in pertinent part:

> Any party who is dissatisfied with the judgment of the county board of taxation upon his appeal may seek review of that judgment in the Tax Court by filing a complaint with the Tax Court, pursuant to rules of court within 45 days of the service of the judgment of the county board, and the Tax Court shall hear and determine all such matters and render its judgment thereon.
>
> At the time that a complaint has been filed with the Tax Court, all taxes or any installments thereof then due and payable for the year for which review is sought must have been paid. No interest shall be due and payable by the appellant for the period from November 1 of the current tax year to the date of filing the complaint.[1]

The plain language of this statute unambiguously indicates that all taxes due and payable for the year involved in the appeal must have been paid at the time of the filing of the complaint. See Powder Mill I Assoc. v. Hamilton Tp., 3 N.J. Tax 439, 445 (Tax Ct. 1981), rev. and

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[1] N.J.S.A. 54:2-39 was repealed by L. 1983, c. 45, effective January 28, 1983. In its place, the Legislature enacted N.J.S.A. 54:51A-1, which replace the second paragraph of N.J.S.A. 54:2-39 with N.J.S.A. 54:51A-1(b), which provides:

> At the time that a complaint has been filed with the Tax Court seeking review of judgment of county tax boards, all taxes or any installments thereof then due and payable for the year for which review is sought must have been paid.

remanded on other grounds, 190 N.J. Super. 63 (App. Div. 1983). Where statutory language is plain, unambiguous and uncontrolled by another part of the act or other legislation, a court may not give it a different meaning. Spiewak v. Rutherford Bd. of Ed., 90 N.J. 63, 74 (1982). The mandatory nature of the prepayment provision is supported by the accepted rule that in a proceeding addressed to the statutory jurisdiction of the tribunal compliance with all applicable statutory requirements is necessary for the exercise of that jurisdiction. See General Trading Co. v. Taxation Div. Director, 83 N.J. 122, 127 (1980). That this was the intent of the Legislature is evident from the following portion of the statement of the Senate Revenue, Finance and Appropriations Committee pertaining to the 1977 amendment adding the second paragraph of N.J.S.A. 54:2-39 fixing the obligation to pay taxes pending appeal (L.1977, c. 357, §2, effective January 31, 1978):

> An appellant dissatisfied with the judgment of the county board of taxation may appeal that judgment to the Division of Tax Appeals. There is no direction in current law regarding tax payments. This bill would require that at the time a petition of appeal has been filed with the Division of Tax Appeals all taxes for the current year must

have been paid. Appeals filed with the Division of Tax Appeals are generally after the November 1 quarterly tax installment is due and payable. Thus, this provision requires an appellant to be current in his tax payments notwithstanding the appeal. This imposes no burden of prepayment of taxes on the appellant, and does not put the burden of an appellant's unpaid property taxes on the other taxpayers in a taxing district -- a burden reflected in the reserve for uncollected taxes, and thus in the tax rate. (Statement to Assembly, No. 2147, Dated: July 11, 1977.)

We thus conclude that this provision of the statute was intended to, and by its plain and unambiguous terms does, establish the prepayment of taxes then due as a jurisdictional prerequisite of an appeal to the Tax Court from a county board judgment.

Such construction of the statute is not inconsistent with the interpretation given to N.J.S.A. 54:3-27, the pertinent portion of which is as follows:

> A taxpayer who shall file an appeal appeal from an assessment against him shall pay to the collector of the taxing district no less than the first three quarters of the taxes assessed against him for the current tax year in the manner prescribed in R.S. 54:4-66 even though his petition to the county board of taxation might request a reduction in excess of one quarter of

> the taxes assessed for the full year. The collector shall accept such amount, when tendered, give a receipt therefor and credit the taxpayer therewith, and the taxpayer shall have the benefit of the same rate of discount on the amount paid as he would have on the whole amount.

This statute applies to direct appeals to the Tax Court, Powder Mill I Assoc., supra, 190 N.J. Super. at 69, and to appeals to the county board. See Lecross Associates v. City Partners, 168 N.J Super. 96 (App. Div. 1979), certif. den. 81 N.J. 294 (1979). As noted in Lecross, the statute being silent as to the time when the payment of taxes must be made, the payment requirement is not jurisdictional and "the tribunal's jurisdiction cannot even be questioned until the taxpayer's obligation has in some manner been crystallized by the municipality through the filing of an appropriate defensive pleading, a motion to dismiss, or even by the institution of tax foreclosure prodeedings." Id. at 99-100. The payment language of this statute is not virtually identical with that of N.J.S.A. 54:2-39, as it does not expressly mandate that all taxes due for the year involved be paid when the complaint is filed. This difference in the payment requirements of these statutes warrants the varying jurisdictional construction of their

provisions. There is thus no interpretive inconsistency as urged by plaintiffs.

Assuming plaintiffs have standing and have not waived their right to raise the constitutional issues, we consider those challenges likewise to be without merit. The strict jurisdictional construction of N.J.S.A. 54:2-39 does not result in an infringement of plaintiffs equal protection or due process guarantees. Equal protection does not require that all persons must be treated identically, but rather that "similar people will be dealt with in a similar manner and that people of different circumstances will not be treated as if they were the same." Levine v. Institutions & Agencies Dept. of N.J., 84 N.J. 234, 256 (1980) (citation omitted). And, unless legislation creates an inherently suspect classification, a legislative classification will be presumed valid, even if it has the effect of treating some differently from others, so long as it bears some rational relationship to a permissible state interest. See Parham v. Hughes, 441 U.S. 347, 351, 99 S. Ct. 1742, ___, 60 L.Ed. 2d 269, 274 (1979). It must be noted that in classifying subjects for different treatment in the field of taxation, a Legislature possesses the greatest freedom in classification. Madden

v. Kentucky, 309 U.S. 83, 88, 60 S.Ct. 406, __, 84 L.Ed. 590, 593 (1940); McKenney v. Byrne, 82 N.J.304, 315 (1980). Thus, in the present case, it was within the Legislature's broad range of discretion to prescribe different jurisdictional requirements for access to the Tax Court by taxpayers who were appealing from a county board decision and those filing initial assessment appeals. Such a distinction has a rational basis in that the former, as contrasted with the latter class, has had the benefit of a hearing as to the correctness of the subject assessments and a determination has been made by a quasi-judicial body establishing the amount of taxes due and payable. As indicated in the legislative history, appeals from the county board generally are filed after the November 1 quarterly tax installment is due and the deferment of this payment during any portion of the appeal period would impose a burden upon the municipality and its taxpayers. This situation does not arise with initial appeals to the Tax Court or the county board as they must be filed by August 15, N.J.S.A. 54:3-21, with judgments of the county board rendered no later than November 15. N.J.S.A. 54:3-26. These different time sequences, and the relationship of each of the procedures to the time when tax payments are due,

afford reasonable support for the difference in the payment requirements applicable to an initial complaint to the Tax Court or a county board and an appeal from a county board to the Tax Court. Accordingly, equal protection is not offended by a strict construction of N.J.S.A. 54:2-39.

Additionally, plaintiffs' right of due process has not been violated by such an interpretation of the statute. The critical components of due process are adequate notice, opportunity for a fair hearing and availability of appropriate review. In re Suspension of Heller, 73 N.J. 292, 310 (1977). The statutory procedures available to plaintiffs for the review of their assessments meets these requirements. N.J.S.A. 54:3-21, et seq. Plaintiffs' opportunity for appropriate review of the county board determination is not impaired by the added procedural limitation that taxes then due be paid before the jurisdiction of the Tax Court can be invoked. The interest of the municipality in receiving timely payment of taxes is clearly significant and outweighs any incidental burden imposed upon plaintiffs, and other taxpayers similarly situated, by this jurisdictional requirement. See Mathews v. Eldridge, 424 U.S., 319, 335, 96 S.Ct. 893, ___, 47 L.Ed. 2d 18, 33 (1976). It is well settled

that a taxpayer may be required to pay the taxes then due as a condition to litigating the amount due. General Trading Co. v. Taxation Div. Director, 83 N.J. 122, 129, (1980); N.Y., Susquehanna & W.R.R. v. Vermeulan, 44 N.J. 491 501, 502 (1965). Plaintiffs' contention that they justifiably relied upon the Lecross decision and the nonexistence, at the time of the filing of the appeal with the Tax Court, of any authority, indicating tht N.J.S.A. 54:2-39 imposed a jurisdictional requirement is misplaced in view of the clear language of the statute and the reliance in Lecross on the absence of any provision in N.J.S.A. 54:3-27 as to the time within which the payment of taxes must be made.

We conclude that the Tax Court lacked jurisdiction to hear plaintiffs' appeal from the county tax board because all taxes then due and payable by plaintiffs were not paid at the time of the filing of the complaint.

Affirmed.

APPENDIX C

TAX COURT OF NEW JERSEY

W.J. SCHNEIDER and K.B. MARCUS,	)	TRANSCRIPT OF RECORDED
	)	PROCEEDINGS
Plaintiffs	)	
	)	Docket Nos. 07-5361A-79
v.	)	07-5361A-80
	)	07-5015A-81
CITY OF EAST ORANGE,	)	
	)	
Defendant	)	
	)	

September 15, 1983
CN 972
Trenton, NJ 08625

B E F O R E:

The Honorable David E. Crabtree

APPEARANCES:

ALAN R. HAMMER, ESQUIRE, Attorney
On behalf of the Plaintiffs, W.J. Schneider and K.B. Marcus

ROBERT F. GRANCATERINO, ESQUIRE, Attorney On behalf of the Defendant, City of East Orange

THE COURT: The next one is W.J. Schneider and K.B. Marcus vs. East Orange. Again, defendant's motion to dismiss for failure to pay taxes.

MR. GRANCATERINO: Same appearance, your Honor, as the previous motion. We've got three separate causes of action here. The first one for the Tax Year 1979, again, we went through oral argument on this, we submitted briefs, approximately a year ago and the purpose of this motion, as I understand it, or this hearing is to supplement any oral argument based on any new light that may have been shed on this ball by counsel.

THE COURT: Cause we understand that in 1979 and Mr. Hammer, you'll correct us if our understanding is incorrect. 1979 is not a direct appeal. '80 and '81 are direct appeals.

MR. HAMMER: That's correct.

THE COURT: And it would appear, from the collector's certification that the taxes were no paid at the time the complaint was filed with this Court with respect to 1979's. Is that correct?

MR. HAMMER: That is correct.

MR. GRANCATERINO: All right, your Honor. From that, we draw the obvious conclusion that the complaint should be dismissed in accordance with 54-239 (sic), the Tammy Brook (phonetic) case. The '80 and '81 cases are direct appeals. The facts are as follows: --

THE COURT: Well, first of all, before we address those two, let's dispose of the '79 first. Mr. Hammer, do you wish to be heard?

MR. HAMMER: Yes, I do. Judge, in preparation for this, I spent a little bit of time reading the cases on this. We are all familiar with LaCrosse. LaCrosse interprets 54:3-27 and finds that whether the taxes are paid is not a jurisdictional question at the County Board level, which would warrant a dismissal of the case. If a motion is made and the taxes are not paid, that's another issue. But the Court in LaCrosse finds a notice is required.

THE COURT: Now are you -- you're addressing '79 now?

MR. HAMMER: '79 only.

THE COURT: All right.

MR. HAMMER: Okay. So that we understand that it's nonjurisdictional as to filing to the County Board. Okay. We've all had the opportunity to read Powder Mill (phoentic). Powder Mill finds and interprets 54:3-21 and said, it's not

even an issue because it's not in the statute. Now, it is my understanding that what we've got here today is really we're dealing with Constitutional questions. We are dealing with a taxpayer's right to be assessed at the same standard as everyone else in a municipality. And I think that denying that right too easily, too quickly, shouldn't be done.

THE COURT: Do you think the requirement that he pay no and litigate later in order to maintain some stability in local budgets is an unconstitutional requirement?

MR. HAMMER: I've got an interest in case here, Judge. By the end of the year, by December 19th, all the taxes were paid. So the question is, how critical is it that when this matter was filed on November 14th -- or let me put it this way. On November 13th the matter was filed in the Tax Court. On the 14th, the third quarter was paid and on one month and five days later, the next quarter was paid. So in all Constitutional questions, we have a little balancing. The hurt town incurs by having one quarter of the taxes paid a month late versus denying this taxpayer, who's assessed at $825,000 in my brief, my expert comes up with two-thirds of that number. My last point is 54:2-39 clearly says you have to pay the taxes. I maintain that we have a problem

with our statutes. I believe these statutes ought to be interpreted consistently, not inconstistently. If you don't need to pay to file with the Tax Court and you don't need to pay to file at the County Board, why do you need to pay to appeal from the County Board to the Tax Court? Why is it not jurisdictional at the county, not jurisdictional at the Tax Court, on a direct appeal, but jurisdictional in the Tax Court on an appeal. Now one further point, the language in 54:3-27 is not any different than 54:2-39. It said you must pay the taxes. So that if--

THE COURT: Except that 54:2-39 is a bit more explicit with respect to the time by which they must have been paid.

MR. HAMMER: Well, 54 --

THE COURT: That's the difference.

MR. HAMMER: Well, 54:3-27 says, taxpayers shall file an appeal, shall pay to the tax collector no less that the first three quarters for the current year in the matter prescribed. Now we know what the matter prescribed is. The Court finds in the LaCrosse case the taxes weren't paid on that date and yet in interpreting that statute, the Court finds it's not jurisdictional. Now we're dealing with an Appellate Division decision. That finds that it's not -- and the Supreme Court -- didn't the Supreme Court

deny certification. So they saw the matter. So that they have held that interpretting (sic) this statute, which you don't have to read too carefully into it says you have to pay the taxes. It says you really don't have to pay the taxes until the motion is made. The Tax Court on a direct appeal and go explain that one to me, why on direct appeal you don't have to pay the taxes, it's not jurisdictional, but on the appeal, it's jurisdictional. I think it doesn't follow. I think before you deprive somebody of their Constitutional right, you have have to have a statute that's clear. You have to have a series of statutes that are not in conflict, that follow each other, follow each other logically and last, but not least, in deciding this issue, you have to value the harm suffered by the municipality versus the harm potentially suffered by the taxpayer. In this case, nobody made any motions, nobody squeezed this guy by his neck, he paid the taxes. He paid the third quarter within twenty-four hours of filing the complaint, he paid the fourth quarter one month later. I think to dismiss this case would be a miscarriage of justice. It really would.

THE COURT: Do you want to respond, Mr. Grancaterino?

MR. GRANCATERINO: Your Honor, I will rely

heavily on Tammy Brook Country Club against Borough of Cresskill. I won't quote to you, because I know --

THE COURT: Is that an -- that's an unreported opinion, isn't it?

MR. GRANCATERINO: That's an unreported Appellate Division decision, but --

MR. HAMMER: I didn't even get a copy. I don't know.

MR. GRANCATERINO: Mr. Hammer, you never seen this case?

MR. HAMMER: No, I don't see them all. I would appreciate if you would send me a copy.

MR. GRANCATERINO: No problem. Judge, I think it's clear that 239 creates a jurisdictional barrier. I'm not going to go over this more times than it's necessary. I just call to your attention that after 239 was interpreted as creating a jurisdictional barrier, and after 3-27 was interpreted, and when I use 3-27, I use the shorthand version. I'm sure we all know what I'm referring to. It was interpreted as an unjurisdictional barrier in LaCrosse. The Legislature reenacted N.J.S.A. 54:2-39 as N.J.S.A., I think, it's 54:51a-2. Just recently. And they changed some of the language. It used to read that when you filed a complaint to the Tax Court, all taxes must be paid. Now, they

changed the language, so when you file a complaint to the Tax Court, on an appeal from a County Board judgment, all taxes must have been paid. Somewhere in there they looked at that particular language, knowing of the cases, and changed it so it refers specifically to an appeal from a County Board of Judgment. That's exactly what we have here. Now, the taxpayer, if he asserted that he needed the opportunity to get the taxes reduced because his property was so overvalued, without having to pay the taxes beforehand, could have gone to the County Board. And would have had the opportunity to pay, at least, only the first three-quarters taxes and have the opportunity to get a reduction, but he didn't do this. I'm sorry, in the direct appeal situation.

The claim that there is a problem with the classification. If you go to the County Board, you don't have to pay your taxes. If you go directly to Tax Court, you don't have to pay your taxes, but if you go to the Tax Court from an appeal from a County Board judgment in the claim that that creates some Constitutional problem, I think, was rejected in the case called Eiffel Tower Coop and I don't know if you've read that one, but that typical type of claim was made. It hasn't been adequately briefed. There has been

no law cited, no Constitutional provision cited. The last thing I want to call your --

THE COURT: Does that case deal with the issue of equal protection?

MR. GRANCATRINO: I think it was just a blanket claim that is unconstitutional. Exactly the same here in the Appellate Division, it said we're not going to deal with such a claim in such an offhand manner.

THE COURT: Do you see any Constitutional problem, Mr. Grancaterino, with permitting a direct appeal for the large property owner. who is not required to pay taxes and the owner of a smaller property, who may not file direct appeal, but under your argument, construing that 54:2-39 and it's successor statute strictly, his case must be dismissed. Do you see any constitutional equal protection problem there?

MR. GRANCATERINO: Well, I think, your Honor, the Legislature is permitted to make those distinctions and as long as there's no showing that the taxpayer couldn't pay it and the Legislature has decided to treat small taxpayers and large taxpayers differently. For whatever reasons, stability of the municipal budget and I argue that both, in that situation, both taxpayers have an adequate opportunity and there is very good reasons for it. For example, let's --

I mean I can speculate on what reason there might be, but for example, under the large taxpayer situation, it takes a lot longer to prepare the case. So if you go on a direct appeal, by the time they get prepared, the issue may have been crystalized and then they have to pay their taxes when the municipality makes a motion on the smaller taxpayer situation. He's got to go to the County Board first. When he goes to the County Board, he's got a form to get relief and he's not required to pay all the taxes on the date that he files his complaint. That's -- I mean we all know that. So I think the large taxpayers and the small taxpayers, from that point of view are being inconsistent. But again, I think that's something for the Legislature to do. I think the upper courts have consistently held that the Legislature is entitled to, if it wants to, make real property tax litigation, refund litigation. So that -- and to create jurisdictional barriers just like they create August 15th as a jurisdictional barrier. And I'm sure I don't have to call your Honor's attention to it, but for the record, we know that the tax court is a court of limited jurisdiction under 2A:3A and the statutes, the finest jurisdiction and one of the statutory requirements of payment of taxes on the date of the complaint is filed, it seems to

me that closes the issue.

MR. HAMMER: If I might just address two points. The point you raised, Judge, as I understood it, the purpose of the statute was to allow municipalities to have the wherewithal to budget and to operate. So Mr. Grancaterino's position on a large appeal, there's other reasons why you don't need the taxes, flies in the face of the intended purpose of the statute. If the purpose of the statute is for the administration of the municipality, we understand that the large taxpayers with large amounts of money are going to have more impact on the administration of that city than the small taxpayer. So to treat a large taxpayer if he doesn't pay his taxes, doesn't have to until the motion and a small entity does, I believe creates a Constitutional equal protection argument. But back to my point, I think we glossed too quickly over the fact that 54:3-27 says, they must pay three-quarters of their taxes. A taxpayer who shall file an appeal from an assessment against him, shall pay to the collector of the taxes in the district not less than the first three-quarters of the tax that he's assessed for the current year. That's a clearly mandatory provision and yet, the Appellate Division --

THE COURT: But it doesn't say when. It

doesn't say when.

MR. HAMMER: In the manner prescribed in 54:4-66. Now if you go to 54:4-66 --

THE COURT: Which are the quarterly due dates.

MR. HAMMER: It says the quarterly due dates. I don't think you have to read into that too quickly to see they have to pay their taxes just like we have to pay our taxes in this case and if LaCrosse finds that nonjurisdictional, it shouldn't be found nonjurisdictional. And again, the facts of this case, I don't always have facts in my favor, but if I ever had facts that were helpful to me, all the taxes paid within one month, it would really be unconsciousable to find against this.

THE COURT: All right, Gentlemen. Thank you very much. The Court has heard the arguments of counsel and it has considered the issue which is nothing more nor less than the strict application of N.J.S.A. 54:2-39, which provides specifically, whenever a complaint was filed with the Tax Court seeking review of County Board judgment, all taxes or any installments thereof, then due and payable, at the time the complaint is filed, must have been paid. Counsels meritorious arguments concerning the Constitutional difficulties inherent in the statutory requirement have been duly

considered and it is this Court's opinion that that the statute must be strictly applied. Any change therein is a matter for the Legislature. Accordingly, defendant's motion to dismiss the 1979 appeal will be granted and this Court strictly construes the language of N.J.S.A. 54:2-39. Defendant's counsel has submitted the appropriate order and the Court will sign it. No, the Court will not sign. It has all three docket number on it. Counsel will prepare the appropriate order for Tax Year 1979 in this case and submit it under the five day rule. Actually, it won't be an order, it will be a judgment.

All right, Gentlemen. We'll now proceed to '80 and '81, which are different matters altogether.

MR. GRANCATRINO: Okay, Judge. It seems to me that the facts in this case, you have a direct appeal, taxes were paid late, after the filing date, but before the motion was made.

THE COURT: Sounds like a little deja vu with Powder Mill, doesn't it?

MR. GRANCATRINO: I rest.

THE COURT: Mr. Hammer, I'm sure you don't want to kick down the door.

MR. HAMMER: I don't have anything to add.

MR. GRANCATRINO: Judge, don't mistake me, I'm not consenting to this now.

THE COURT: I understand. The Court has become pecularly (sic) aware from your repeated appearances here, Mr. Grancatrino, that you seldom concede anything.

Obviously, the situation for Tax Year '80 and '81 is quite different. The Court finds that as those are direct appeals and that the taxes have been paid, prior to the motion, that the recent decision of the Appellate Division in Powder Mill I Associates versus Hamilton Township is squarely in point. Accordingly, defendant's motion to dismiss the cases for those two years will be denied. Plaintiff's counsel will prepare the appropriate order and submit it under the five day rule.

MR. HAMMER: Thank you.

MR. GRANCATERINO: Thank you, Judge.

THE COURT: Thank you, Gentlemen.

W.J. SCHNEIDER and K.B. MARCUS, Plaintiff vs. CITY OF EAST ORANGE, Defendant	TAX COURT OF NEW JERSEY Docket No.: 07-05361A-79 CIVIL ACTION ORDER

THIS MATTER having been opened to the Court upon application of Skoloff & Wolfe, P.A. (Robert F. Giancaterino, Esquire, appearing), attorneys for defendant, for an Order dismissing taxpayer's Complaint for failure to comply with N.J.S.A. 54:2-39 and the Court having reviewed the moving papers and the submission of oral argument.

IT IS on this 3rd day of October, 1983, hereby

ORDERED that taxpayer's complaint filed for the tax year 1979 is hereby dismissed for failure to comply with the tax payment prerequisites of N.J.S.A. 54:2-39

/s/

HON. DAVID E. CRABTREE, J.T.C

APENDIX D

AMENDMENT XIV.

§ 1. Citizenship rights not to be abridged by states

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiciton thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

ASSESSMENT

1. Taxation; assessment

1. (a) Property shall be assessed for taxation under general laws and by uniform rules. All real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value, except as otherwise permitted herein, and such real property shall be taxed at the general tax rate of the taxing district in which the property is situated, for the use of such taxing district.

54:2-39. Review of judgment of county board

Any party who is dissatisfied with the judgment of the county board of taxation upon his appeal may seek review of that judgment in the Tax Court by filing a complaint with the Tax Court, pursuant to rules of court within 45 days of the service of the judgment of the county board, and the Tax Court shall hear and determine all such matters and render its judgment thereon.

At the time that a complaint has been filed with the Tax Court, all taxes or any installments thereof then due and payable for the year for which review is sought must have been paid. No interest shall be due and payable by the appellant for the period from November 1 of the current tax year to the date of filing the complaint.

If the Tax Court shall determine that the appeal to the county board of taxation has been (a) withdrawn at the hearing, or previously thereto in writing by the appellant or his agent; (b) dismissed because of appellant's failure to prosecute the appeal at a hearing called by the county tax board; (c) settled by mutual consent of the taxpayer and assessor of the taxing district, there shall be no review. This provision

shall not preclude a review by the Tax Court in the event that the appeal was "dismissed without prejudice" by the county board of taxation.

54:3-27. Payment of tax pending appeal

A taxpayer who shall file an appeal from an assessment against him shall pay to the collector of the taxing district no less than the first three quarters of the taxes assessed against him for the current tax year in the manner prescribed in R.S. 54:4-66 even though his petition to the county board of taxation might request a reduction in excess of one quarter of the taxes assessed for the full year. The collector shall accept such amount, when tendered, give a receipt therefor and credit the taxpayer therewith, and the taxpayer shall have the benefit of the same rate of discount on the amount paid as he would have on the whole amount.

The payment of part or all of the taxes upon any property, due for the year for which an appeal from an assessment upon such property has been or shall hereafter be taken, or of taxes for subsequent years, shall in nowise prejudice that status of the appeal or the rights of the appellant to prosecute such appeal, before the county board of taxation, the State Board of Tax Appeals, or in any court to which the judgment

arising out of such appeal shall be taken, except as may be provided for in section 2 of this act.